

**JAN 25 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

CHANG HEE LEE,

Petitioner - Appellant,

v.

ALBERTO R. GONZALES, Attorney  
General; et al.,

Respondents - Appellees.

No. 03-36026

D.C. No. CV-03-01194-MJP

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Marsha J. Pechman, District Judge, Presiding

Submitted January 23, 2006<sup>\*\*</sup>  
Seattle, Washington

Before: RAWLINSON and CLIFTON, Circuit Judges, and MARSHALL<sup>\*\*\*</sup>,  
Chief District Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Consuelo Bland Marshall, Chief United States District Judge for the Central District of California, sitting by designation.

1. While Lee's appeal was pending, the REAL ID Act of 2005 went into effect. *See* Pub. L. No. 109-13, 119 Stat. 231. Consequently, we construe Lee's habeas petition as if it were a petition for review and only reach the merits of Lee's statutory interpretation and due process claims. *See Alvarez-Barajas v. Gonzales*, 418 F.3d 1050, 1053 (9th Cir. 2005).

2. Lee's petition for review is denied insofar as it asserts that the Immigration Judge (IJ) labored under an erroneous legal standard, because the IJ considered all the relevant factors and balanced the equities in assessing Lee's eligibility for adjustment of status. *See Eide-Kahayon v. INS*, 86 F.3d 147, 150 (9th Cir. 1996) (per curiam), *see also Watkins v. INS*, 63 F.3d 844, 850 (9th Cir. 1995).

3. We lack jurisdiction to review Lee's petition as it relates to his claim that he was denied a fair hearing in violation of due process, because Lee has failed to allege a colorable constitutional violation. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005), *see also Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001).

**PETITION FOR REVIEW DISMISSED** in part, and **DENIED** in part.